

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

* * *

HARRY G. BEYOGLIDES, JR.,
Special Administrator of
the Estate of Robert Andrew
Richardson, Sr., Deceased,

Plaintiff,

vs.

Case No: 3:14-CV-00158

PHIL PLUMMER/MONTGOMERY
COUNTY SHERIFF, et al.,

Defendants.

* * *

Volume one of the deposition of MATTHEW H.
HENNING, Witness herein, called by the Plaintiff for
cross-examination pursuant to the Federal Rules of
Civil Procedure, taken before me, Daniel M. Gershwin,
Certified Court Reporter and Notary Public in and for
the State of Georgia, at 5855 Sandy Springs Circle,
Suite 140, Atlanta, Georgia, on Tuesday, March 1st,
2016, at 2:00 p.m.

* * *

Beyoglides, Jr., Harry G. v. Montgomery County Sheriff

Matthew H. Henning

<p>1 REPORTER DISCLOSURE OF NO CONTRACT</p> <p>2</p> <p>3 I, Daniel M. Gershwin, Certified Court</p> <p>4 Reporter, do hereby disclose pursuant to Article</p> <p>5 10.B of the Rules and Regulations of the Board of</p> <p>6 Court Reporting of the Judicial Council of</p> <p>7 Georgia that I am a Georgia Certified Court</p> <p>8 Reporter. D'Amico Gershwin/I was contacted by</p> <p>9 Mike Mobley Reporting to provide court reporting</p> <p>10 services for this deposition; D'Amico Gershwin/I</p> <p>11 will not be taking this deposition under any</p> <p>12 contract that is prohibited by O.C.G.A.</p> <p>13 15-14-37(a) and (b) or Article 7C of the Board;</p> <p>14 and I am not disqualified for a relationship of</p> <p>15 interest under the provisions of O.C.G.A.</p> <p>16 9-11-28(c).</p> <p>17 There is no contract to provide reporting</p> <p>18 services between myself or any person with whom I</p> <p>19 have a principal and agency relationship nor any</p> <p>20 attorney at law in this action, party to this</p> <p>21 action, party having a financial interest in this</p> <p>22 action, or agent for an attorney at law in this</p> <p>23 action, party to this action, or party having a</p> <p>24 financial interest in this action. Any and all</p> <p>25 financial arrangements beyond my/D'Amico</p> <p>Gershwin's usual and customary rates have been</p> <p>disclosed and offered to all parties.</p> <p>This, the 14th day of March, 2016.</p> <p><u>DANIEL M. GERSHWIN, CCR-B-1012</u></p> <p>Page 2</p>	<p>1 FIRM DISCLOSURE OF NO CONTRACT</p> <p>2</p> <p>3 I, Todd Mobley, do hereby disclose</p> <p>4 pursuant to Article 10.B of the Rules and</p> <p>5 Regulations of the Board of Court Reporting of</p> <p>6 the Judicial Council of Georgia that Mike Mobley</p> <p>7 Reporting was contacted by the taking attorney to</p> <p>8 provide court reporting services for this</p> <p>9 deposition and there is no disclosed contract</p> <p>10 that is prohibited by O.C.G.A. 15-14-37(a) and</p> <p>11 (b) or Article 7C of the Rules and Regulations of</p> <p>12 the Board for the taking of this deposition.</p> <p>13 There is no contract to provide reporting</p> <p>14 services between Mike Mobley Reporting or any</p> <p>15 person with whom Mike Mobley Reporting has a</p> <p>16 principal and agency relationship nor any</p> <p>17 attorney at law in this action, party to this</p> <p>18 action, party having a financial interest in this</p> <p>19 action, or agent for an attorney at law in this</p> <p>20 action, party to this action, or party having a</p> <p>21 financial interest in this action. Any and all</p> <p>22 financial arrangements beyond Mike Mobley</p> <p>23 Reporting's usual and customary rates have been</p> <p>24 disclosed and offered to all parties.</p> <p>25 This, the 14th day of March, 2016.</p> <p>TODD MOBLEY MIKE MOBLEY REPORTING</p> <p>Page 4</p>
<p>1 FIRM DISCLOSURE OF NO CONTRACT</p> <p>2</p> <p>3 I, Daniel M. Gershwin, do hereby disclose</p> <p>4 pursuant to Article 10.B of the Rules and</p> <p>5 Regulations of the Board of Court Reporting of</p> <p>6 the Judicial Council of Georgia that D'Amico</p> <p>7 Gershwin, Inc. was contacted by Mike Mobley</p> <p>8 Reporting to provide court reporting services for</p> <p>9 this deposition and there is no disclosed</p> <p>10 contract that is prohibited by O.C.G.A.</p> <p>11 15-14-37(a) and (b) or Article 7C of the Rules</p> <p>12 and Regulations of the Board for the taking of</p> <p>13 this deposition.</p> <p>14 There is no contract to provide reporting</p> <p>15 services between D'Amico Gershwin, Inc. and Mike</p> <p>16 Mobley Reporting or any person with whom D'Amico</p> <p>17 Gershwin, Inc. has a principal and agency</p> <p>18 relationship nor any attorney at law in this</p> <p>19 action, party to this action, party having a</p> <p>20 financial interest in this action, or agent for</p> <p>21 an attorney at law in this action, party to this</p> <p>22 action, or party having a financial interest in</p> <p>23 this action. Any and all financial arrangements</p> <p>24 beyond D'Amico Gershwin's usual and customary</p> <p>25 rates have been disclosed and offered to all</p> <p>parties.</p> <p>This, the 14th day of March, 2016.</p> <p>DANIEL M. GERSHWIN, D'AMICO GERSHWIN, INC.</p> <p>Page 3</p>	<p>1 APPEARANCES OF COUNSEL (all via videoconference):</p> <p>2 On behalf of the Plaintiff:</p> <p>3 NICHOLAS A. DICELLO, ESQUIRE</p> <p>4 Spangenberg, Shibley & Liber LLP</p> <p>5 1001 Lakeside Avenue</p> <p>6 Suite 1700</p> <p>7 Cleveland, Ohio 44114</p> <p>8 T: (877) 696-3303</p> <p>9 F: (216) 696-3924</p> <p>10 E: Ndicello@spanglaw.com</p> <p>11 On behalf of the Defendants Sheriff Phil Plummer,</p> <p>12 Sergeants Ted Jackson and Brian Lewis, Corrections</p> <p>13 Officers Dustin Johnson, Matthew Henning, Michael</p> <p>14 Beach, Keith Mayes, Bradley Marshall, Michael Stumpff</p> <p>15 and Tonya Benjamin, and Sheriff Deputies Linda Shutts</p> <p>16 and Andrew Wittman:</p> <p>17 JAMEY T. PREGON, ESQUIRE</p> <p>18 Dinkler Pregon, LLC</p> <p>19 5335 Far Hills Avenue</p> <p>20 Suite 123</p> <p>21 Dayton, Ohio 45429</p> <p>22 T: (937) 426-4200</p> <p>23 F: (866) 831-0904</p> <p>24 E: Jamey@dinklerpregon.com</p> <p>25 On behalf of the Defendants NaphCare, Inc.,</p> <p>Nurse Kristy Kruse, Nurse Felicia Foster, Nurse Jon</p> <p>Boehringer, Nurse Krisandra Miles, Medic Steven</p> <p>Stockhauser, and Brenda Garrett Ellis, M.D.:</p> <p>ROBERT J. HOJNOSKI, ESQUIRE</p> <p>Reminger</p> <p>525 Vine Street</p> <p>Suite 1700</p> <p>Cincinnati, Ohio 45202</p> <p>T: (513) 721-1311</p> <p>F: (513) 721-2553</p> <p>E: Rhojnoski@reminger.com</p> <p>---</p> <p>Page 5</p>

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<p>1 MATTHEW H. HENNING, 2 having been first duly sworn, was examined and 3 testified as follows: 4 EXAMINATION 5 BY MR. DICELLO: 6 Q Hi, Mr. Henning. 7 A Hello, sir. 8 Q My name's Nick DiCello. I appreciate you 9 making yourself available today down there. You're in 10 Georgia? 11 A Yes, sir. 12 Q And I represent the estate of Robert 13 Richardson in connection with a lawsuit that's been 14 filed surrounding Robert Richardson's death that took 15 place back in May of 2012. 16 You understand that you're here to give a 17 deposition in connection with that matter? 18 A Yes, sir. 19 Q Okay. I appreciate you making yourself 20 available. We're doing this over video, as you can 21 see, so it's important that we make sure to wait for 22 each other to finish talking. Okay? 23 A Yes, sir. 24 Q Ever been deposed before? 25 A No, sir.</p> <p style="text-align: right;">Page 6</p>	<p>1 position? 2 A Yes, sir. 3 Q And how long were you a corrections 4 officer in Montgomery County? 5 A Right about one year. 6 Q Are you from the Dayton area originally? 7 A No, sir. 8 Q Where are you from? 9 A I was born in Colorado, but I grew up -- 10 most of my younger years were actually here in 11 Georgia. 12 Q So how did you end up in Dayton? 13 A Short version, military. 14 Q Tell me about your military background, 15 please. 16 A Yes, sir. Went to high school here in 17 Georgia and then I received an ROTC scholarship 18 through the Air Force, which ROTC is the Reserve 19 Officer Training Corps. I started at UGA and 20 basically was a normal college student for my studies 21 and whatnot, but after classes and additional classes 22 I would take through the Air Force, and so I would 23 have Air Force training along with a bachelor's 24 degree. Unfortunately I was not able to finish the 25 ROTC program, and so that's whenever I moved up to the</p> <p style="text-align: right;">Page 8</p>
<p>1 Q So this is a question-and-answer session. 2 I'll ask the questions, you provide the answers. 3 Okay? 4 A Yes, sir. 5 Q You're under oath. You understand that 6 you're under oath? 7 A Yes, sir. 8 Q You understand that this is the same kind 9 of oath that you would be under when you're called to 10 testify at trial in front of a jury? 11 A Yes, sir. 12 Q And do you understand that I'm going to 13 be relying on the truthfulness of your answers today 14 in connection with this matter? 15 A Yes, sir. 16 Q All right. Officer Henning, did you 17 happen -- well, I should ask you, what's your current 18 employment down there in Georgia? 19 A It's the Covington Police Department. 20 It's a municipal police department for a city. 21 Q How long have you been a police officer 22 down there in Covington? 23 A A little over two and a half years. 24 Q Did you leave the employment of the 25 Montgomery County Sheriff's Office to pursue that</p> <p style="text-align: right;">Page 7</p>	<p>1 Dayton area. I was actually looking for more of a 2 contractor's job at the federal level, and I did 3 obtain one. It was working base security there at 4 Wright-Patterson. And whenever that contract died, 5 that's whenever I looked toward the law enforcement 6 side. 7 Q Okay. Thanks for that. I participated 8 in the ROTC program in college as well, so I know a 9 little bit about what that involves. 10 Can you tell me why it was that you 11 didn't complete the program? 12 A I actually failed out because of my 13 grades. Unfortunately I was a little bit too focused 14 on the Air Force side of it, and whenever I started 15 hitting my junior year, you know, classes like 16 calculus three and physics -- 17 Q Enough said, yeah, enough said. 18 So how long were you employed at 19 Wright-Patterson Air Force Base? 20 A I want to say it was only two months. It 21 was a very short-term, fill-in position because the 22 contract was going under, and they knew that. 23 Q And that was a security job you said? 24 A Yes, sir. Basically we controlled the 25 entry and exit points for the Air Force base, so we</p> <p style="text-align: right;">Page 9</p>

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1 are standing at gates mainly checking IDs and
 2 verifying security personnel were able to enter and
 3 exit the base.
 4 **Q Did you have any kind of security**
 5 **licensure or certifications or anything at that time?**
 6 A I do not believe so.
 7 **Q So what did you do after the couple of**
 8 **months when, like you said, the contract expired?**
 9 A I had already started the application
 10 process with Montgomery County. And whenever they
 11 gave me -- or they notified me that I was going to be
 12 hired, I went ahead and resigned from the security
 13 position and went ahead and took the corrections
 14 officer's position.
 15 **Q Mr. Henning, what's your date of birth?**
 16 MR. PREGON: Can we go off the record and
 17 do that?
 18 MR. DICELLO: Sure.
 19 (Thereupon, an off-the-record discussion
 20 was held.)
 21 BY MR. DICELLO:
 22 **Q So what position were you hired into at**
 23 **the Montgomery Sheriff's Department?**
 24 A The corrections officer position.
 25 **Q I've heard some folks pursue a role or**

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1 career in law enforcement through the Montgomery
 2 County Sheriff with the goal of getting onto the road
 3 patrol or an investigative unit outside the jail. Was
 4 that your goal or career path, that you had to start
 5 at the jail to get there, or did you want to work at
 6 the jail?
 7 A No, sir. I was using that as transition
 8 to the road. It would have gotten me in the door with
 9 the sheriff's department, and that generally makes it
 10 a little easier transition.
 11 **Q Understood.**
 12 **So when did you start with the Montgomery**
 13 **County Jail, if you remember?**
 14 A I don't remember the date. I know it's
 15 the same day that the incident that we're going to
 16 discuss was. That was actually my first day on the
 17 job.
 18 **Q So the incident we're going to discuss is**
 19 **the death of Robert Richardson. Do you understand**
 20 **that?**
 21 A Yes, sir.
 22 **Q Okay. That occurred on May 19th, 2012,**
 23 **which I think we've figured out was a Saturday. So is**
 24 **that consistent with your recollection, that that was**
 25 **your first day on the job, Saturday, May 19th, 2012?**

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1 A Yes, sir.
 2 **Q Do you remember what shift you worked**
 3 **that day?**
 4 A It was the morning shift or the day
 5 shift. I don't remember exactly the -- whether it's
 6 first or second because here at the police department
 7 we have it -- it's different than the way it was
 8 there. But it was like the 7:00 to 3:00 was the
 9 shift.
 10 **Q Were you assigned to one corrections**
 11 **officer that you shadowed for the day?**
 12 A Yes, sir. It was Dustin Johnson. He was
 13 my field training officer or the officer that I would
 14 shadow and learn from.
 15 **Q I don't have the opportunity to be in the**
 16 **same room with you, but this case involves some issues**
 17 **involving restraint, so I've been asking all the COs**
 18 **that were involved in the restraint of Mr. Richardson**
 19 **what their height and weight is, so I'm going to ask**
 20 **you the same question. What was your height and**
 21 **weight back in 2012?**
 22 A Six-one. I was probably 210, 215,
 23 somewhere around in there.
 24 **Q Before you started that first day in the**
 25 **jail, had Montgomery County ever provided you with any**

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1 training on the topic of positional asphyxia?
 2 A Not that I'm aware of. Like I said, I've
 3 been working down here for two and a half years, so
 4 I've learned a lot more about restraints and different
 5 medical things that can happen. To be honest, I'm not
 6 sure I was aware of it at the time, but I'm not a
 7 hundred percent sure.
 8 **Q I appreciate that, and I am going to ask**
 9 **you to do your best to try to differentiate some of**
 10 **the training you might have gotten down in Georgia**
 11 **versus some of the training you got up here in Ohio.**
 12 **And just as you've done, just do your best and let us**
 13 **know that. Okay?**
 14 A Yes, sir.
 15 **Q So down in Georgia, do you believe you've**
 16 **gotten some training about positional asphyxia?**
 17 A Yes, sir. That is actually covered in
 18 our basic mandate courses or our basic academy to
 19 become a police officer. They go over positional
 20 asphyxia kind of as a brief topic of constantly
 21 checking on the person that if they're put in a tight
 22 spot it could inhibit their breathing, and so you have
 23 to check on them if they're in a position that isn't
 24 keeping their body upright where they can breathe.
 25 **Q All right. Is there a general rule that**

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<p>1 you've learned down there in Georgia in connection</p> <p>2 with your police training that once somebody is</p> <p>3 handcuffed, the goal is to get them up off their belly</p> <p>4 as soon as possible?</p> <p>5 A It's a situation dictates, officer</p> <p>6 safety, what's going on around you, where you are,</p> <p>7 what you can and can't do. To say there's a rule of</p> <p>8 thumb, not really. The rule of thumb you go by is to</p> <p>9 check on them, you know, because --</p> <p>10 Q Check on them?</p> <p>11 A Right.</p> <p>12 Q Do you recall ever reviewing any kind of</p> <p>13 written materials down there that your municipality</p> <p>14 provides that deal with positioning a restrained</p> <p>15 suspect or positional asphyxia, anything like that?</p> <p>16 A I know it's been gone over. As far as a</p> <p>17 specific policy, I don't know that I could point you</p> <p>18 to one.</p> <p>19 Q Okay. You did mention kind of -- the</p> <p>20 reason I asked, you mentioned there's a basic mandate.</p> <p>21 What were you talking about when you mentioned that</p> <p>22 mandate?</p> <p>23 A That's the actual police academy, and</p> <p>24 they go over ways of handcuffing, you know, things --</p> <p>25 hogtying where you're binding the feet and hands</p> <p style="text-align: right;">Page 14</p>	<p>1 could recall that I had, but I'm not sure on that.</p> <p>2 Q Okay. You said you went through the</p> <p>3 corrections academy after the incident where</p> <p>4 Mr. Richardson died in the jail?</p> <p>5 A Yes, sir.</p> <p>6 Q So what kind of training had you had</p> <p>7 prior to your first day on the job in the jail from</p> <p>8 Montgomery County?</p> <p>9 A I know I had had --</p> <p>10 MR. PREGON: Objection; asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: Huh?</p> <p>13 MR. PREGON: I'm sorry. I said</p> <p>14 objection, asked and answered. Go ahead.</p> <p>15 THE WITNESS: Oh, okay.</p> <p>16 A I would have to say that I went through</p> <p>17 an orientation period. They would have given us a</p> <p>18 belt, handcuff cases, radio, so we would have gone</p> <p>19 over basics. But I don't know that I received any</p> <p>20 formal training before that time.</p> <p>21 BY MR. DICELLO:</p> <p>22 Q How long was the orientation period?</p> <p>23 A I couldn't tell you. I honestly don't</p> <p>24 remember.</p> <p>25 Q Was it conducted at one time or over the</p> <p style="text-align: right;">Page 16</p>
<p>1 together behind someone's back, you know, is illegal.</p> <p>2 They go over those kind of topics, what you can and</p> <p>3 can't do legally based upon Georgia law.</p> <p>4 Q Okay. Prior to your first day on the job</p> <p>5 at the Montgomery County jail, had you ever reviewed</p> <p>6 the written policies and procedures governing</p> <p>7 restraint at the jail?</p> <p>8 MR. PREGON: Did you say before his first</p> <p>9 day?</p> <p>10 MR. DICELLO: Yeah.</p> <p>11 A I honestly don't know. That long ago I</p> <p>12 know I had a brief orientation period, but to say what</p> <p>13 I did during that orientation period, I honestly don't</p> <p>14 remember.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q As you sit here today, can you recall</p> <p>17 ever being educated about prone restraint before your</p> <p>18 first day on the job at the jail?</p> <p>19 A It would be hard for me to point out.</p> <p>20 Like I said, unfortunately for my memory working at</p> <p>21 that agency and then the agency here in Georgia, I've</p> <p>22 been through more training, basic mandate here.</p> <p>23 After the incident, I actually went</p> <p>24 through the corrections academy, and so I've received</p> <p>25 a lot more training since then. I don't believe I</p> <p style="text-align: right;">Page 15</p>	<p>1 course of multiple days?</p> <p>2 A I'm not a hundred percent sure, but I</p> <p>3 believe it's multiple days because you go --</p> <p>4 Q How many -- go ahead.</p> <p>5 A How many days, I'm not sure. I know we</p> <p>6 did like a tour of the jail. We did the sheriff's</p> <p>7 office. We went to different departments related to</p> <p>8 the sheriff's department. But how many days and what</p> <p>9 I did, I'm sorry, that was too long ago to be able to</p> <p>10 give you too many specifics.</p> <p>11 Q Were you a corrections officer as of</p> <p>12 May 19th, 2012?</p> <p>13 A Yes, sir. That was my first day.</p> <p>14 Q But you hadn't been to the corrections</p> <p>15 academy yet; correct?</p> <p>16 A Correct, I had not been.</p> <p>17 Q When you graduate from the corrections</p> <p>18 academy, you receive a certification; correct?</p> <p>19 A Yes, sir.</p> <p>20 Q So as of May 19th, 2012, you had no</p> <p>21 certifications as a corrections officer; true?</p> <p>22 A Not from the state, no, sir.</p> <p>23 Q From any agency?</p> <p>24 A No, sir.</p> <p>25 Q Yes, that's correct?</p> <p style="text-align: right;">Page 17</p>

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<p>1 A Yes, sir, that is correct.</p> <p>2 Q So just to make sure. Sometimes I asked</p> <p>3 a poorly phrased question, but let me make sure to get</p> <p>4 the question and answer. As of May 19th, 2012, you</p> <p>5 had no certifications from any agency that you were a</p> <p>6 certified corrections officer; correct?</p> <p>7 A That is correct, I did not have any</p> <p>8 certifications.</p> <p>9 Q As of May 19th, 2012, had you ever been</p> <p>10 inside of a jail before?</p> <p>11 A Only on a tour capacity.</p> <p>12 Q How long was the corrections academy to</p> <p>13 become a certified corrections officer?</p> <p>14 A I would have to guess, and I believe it</p> <p>15 was two weeks. Like I said, that's a guess. I know</p> <p>16 it was an extended time. It wasn't just like a</p> <p>17 one-day class. It was a prolonged class.</p> <p>18 MR. PREGON: And just so we're clear,</p> <p>19 nobody's asking you to guess today. He's not</p> <p>20 asking you to guess. Just tell him what you</p> <p>21 know.</p> <p>22 A Yes, sir. I'm not sure the exact</p> <p>23 duration of the academy.</p> <p>24 BY MR. DICELLO:</p> <p>25 Q To graduate from the academy, did you</p> <p style="text-align: right;">Page 18</p>	<p>1 Q Prior to May 19th, 2012, had you ever</p> <p>2 been on the D-pod at the jail?</p> <p>3 A Maybe in a tour, but no, sir, not in a</p> <p>4 working capacity. And just to clarify, I'd never been</p> <p>5 arrested in the jail either.</p> <p>6 Q Okay. Thank you.</p> <p>7 So have you had a chance to review your</p> <p>8 narrative report in the Tiburon system before today's</p> <p>9 deposition?</p> <p>10 A Yes, sir.</p> <p>11 Q Did that help refresh your recollection</p> <p>12 about some of the events you witnessed?</p> <p>13 A Yes, sir.</p> <p>14 Q Something from your Tiburon report that</p> <p>15 you documented indicates that Richardson appeared to</p> <p>16 be in a daze, unaware of what was going on. Why is it</p> <p>17 that you believe that Mr. Richardson was in a daze and</p> <p>18 was unaware of what was going on, if you remember?</p> <p>19 A He had a confused look on his face, like</p> <p>20 he didn't understand what was going on, a distant, not</p> <p>21 recognizing who we were kind of look. It's hard to</p> <p>22 explain.</p> <p>23 Q Fair enough.</p> <p>24 And you understood that Mr. Richardson</p> <p>25 was having a medical episode; correct?</p> <p style="text-align: right;">Page 20</p>
<p>1 have to take any kind of tests or anything?</p> <p>2 A Yes, sir.</p> <p>3 Q Prior to May 19th, 2012, had you ever</p> <p>4 restrained anyone?</p> <p>5 MR. PREGON: For the jail or for</p> <p>6 anywhere?</p> <p>7 MR. DICELLO: Anywhere.</p> <p>8 BY MR. DICELLO:</p> <p>9 Q I'm not talking about wrestling around</p> <p>10 with your brother or anything.</p> <p>11 A Right.</p> <p>12 Q I'm talking prior to May 19th, 2012, had</p> <p>13 you ever participated in restraining a suspect or an</p> <p>14 inmate?</p> <p>15 A We had area detained working the security</p> <p>16 for the Air Force. And what I mean by that is if a</p> <p>17 car pulls up to the gate, we would redirect them to a</p> <p>18 secondary area. But no, sir, I don't believe I'd ever</p> <p>19 applied handcuffs or any type of individual restraints</p> <p>20 on a person.</p> <p>21 Q So the first time you ever applied any</p> <p>22 restraint to anyone was Robert Richardson; correct?</p> <p>23 A I may have applied earlier that day. I</p> <p>24 couldn't tell you if he was the first one that I had</p> <p>25 been with.</p> <p style="text-align: right;">Page 19</p>	<p>1 A Yes, sir.</p> <p>2 Q You also say he appeared to be in a state</p> <p>3 of panic; correct?</p> <p>4 A Yes, sir.</p> <p>5 Q Did he look scared?</p> <p>6 MR. PREGON: Objection. Objection to</p> <p>7 foundation and form. Go ahead.</p> <p>8 A Scared, confused, more confused and</p> <p>9 disoriented than I would say scared, kind of looked</p> <p>10 like he was cornered and didn't know what to do kind</p> <p>11 of.</p> <p>12 BY MR. DICELLO:</p> <p>13 Q The date on your Tiburon report indicates</p> <p>14 that you filled it out the day after the incident. Is</p> <p>15 that consistent with your recollection?</p> <p>16 A Yes, sir.</p> <p>17 Q Had you ever filled out a narrative</p> <p>18 report like this prior to May 20th, 2012?</p> <p>19 A I'm not sure. Like I said, that was the</p> <p>20 first day on the job.</p> <p>21 Q Right. So do you remember who instructed</p> <p>22 you to fill out this narrative? The reason I ask is</p> <p>23 it sounds to me like you wouldn't necessarily know</p> <p>24 that's what you had to do if it was your first day on</p> <p>25 the job.</p> <p style="text-align: right;">Page 21</p>

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<p>1 A Right. I know I was told the next 2 morning when I came into work. As to who told me, I 3 don't know. I was informed that Mr. Richardson had 4 passed and that I needed to write a report. I don't 5 recall who informed me of that.</p> <p>6 Q Did somebody have to show you how to 7 access the computer and where to write the report?</p> <p>8 A Yes. That would have been --</p> <p>9 Q Did somebody -- go ahead.</p> <p>10 A I'm sorry. That would have been Dustin 11 Johnson. He would have been the one that would have 12 walked me through that as my field training officer.</p> <p>13 Q And did Dustin Johnson sit there with you 14 while you created your report?</p> <p>15 A I don't know. Through my field training 16 program, I know we wrote several reports. He always 17 reviewed them. But if he was sitting beside me while 18 I wrote it, I don't know.</p> <p>19 Q Fair to say that you and Dusty Johnson 20 talked about what you were going to put in the report; 21 correct?</p> <p>22 A Yes, sir.</p> <p>23 Q Because there's a -- I want to focus on a 24 phrase you use here. It says: To prevent an 25 unintentional attack on corrections officers. That's</p> <p style="text-align: right;">Page 22</p>	<p>1 person I see use the words "unintentional attack" are 2 Dusty Johnson. You and Dustin are the only people 3 that documented that you were taking action to prevent 4 Robert Richardson from unintentionally attacking 5 people. Does that refresh your recollection at all or 6 help you to understand whether or not those are your 7 words or Dustin's?</p> <p>8 MR. PREGON: And I'll object to the -- 9 the narratives will speak for themselves. It's 10 not word for word as you're characterizing it.</p> <p>11 BY MR. DICELLO:</p> <p>12 Q No. I'm saying the word "unintentional 13 attack" only exists in your statement and in Dustin 14 Johnson's statement. It doesn't exist in any anybody 15 else's statements.</p> <p>16 A I understand.</p> <p>17 Q Do you think that you guys talked about 18 that phraseology then?</p> <p>19 MR. PREGON: Objection; asked and 20 answered.</p> <p>21 A I believe we would have since he was 22 training me, but he never wrote my reports for me.</p> <p>23 BY MR. DICELLO:</p> <p>24 Q Understood. Okay. Appreciate that. 25 That helps.</p> <p style="text-align: right;">Page 24</p>
<p>1 not your language; is it? Dustin Johnson told you to 2 write that; correct?</p> <p>3 MR. PREGON: Objection.</p> <p>4 A I don't know. That would have been maybe 5 an explanation.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q The reason I ask, do you think that you, 8 as somebody whose first day on the job in a jail who 9 hadn't been through the corrections officer academy 10 yet, would use the term "to prevent an unintentional 11 attack on corrections officers" in a report?</p> <p>12 MR. PREGON: Objection to form and 13 foundation.</p> <p>14 A I'm not sure. I know I use similar 15 terminology now whenever I do a use-of-force report or 16 any other report because I describe the purpose of 17 what I'm doing. Because for someone outside of law 18 enforcement, they may not understand the actions we're 19 taking. So whether or not those are my exact words, I 20 really can't tell you.</p> <p>21 BY MR. DICELLO:</p> <p>22 Q Okay. We have all the Tiburon report 23 narratives as an exhibit in this case, and the record 24 will reflect how each corrections officer went about 25 choosing the words they used, but the only other</p> <p style="text-align: right;">Page 23</p>	<p>1 A Yes.</p> <p>2 Q Did you review Dustin Johnson's narrative 3 report before you wrote yours?</p> <p>4 A I don't know.</p> <p>5 Q Is that something you did with field 6 training officers while you were being trained, that 7 you would read their reports before you wrote yours?</p> <p>8 A He had me read other people's reports to 9 look at style, how other people would write their 10 reports, and he always tried to get me to do better 11 and always wanted me to write in a fashion that would 12 explain what was going on. So yes, I would have read 13 other people's reports.</p> <p>14 As to this incident, I couldn't tell you 15 if I'd read anybody else's report before I wrote mine 16 or not.</p> <p>17 Q Okay. Did Mr. Richardson unintentionally 18 attack anybody on May 19th, 2012?</p> <p>19 A I know he kicked me.</p> <p>20 MR. PREGON: Objection. Go ahead.</p> <p>21 A When we were securing him and trying to 22 help him, I was near his ankles, and because of the 23 way he was moving, he unintentionally struck me, but 24 it was not an aggressive manner.</p> <p>25 BY MR. DICELLO:</p> <p style="text-align: right;">Page 25</p>

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1 **Q At the time that he unintentionally**
2 **struck you with his foot, he was being restrained by**
3 **other officers; correct?**
4 MR. PREGON: Objection to form.
5 A We were trying to help him. At what
6 point in time he was in handcuffs versus when I was
7 trying to control his legs, I couldn't tell you.
8 BY MR. PREGON:
9 **Q Define what an unintentional attack is**
10 **for us, this phrase you use in your report. How do**
11 **you define "unintentional attack" when you're using it**
12 **in a report to communicate what's happening?**
13 A Mainly intent is what I use as a factor.
14 An intentional attack I believe the person's intent
15 would be to cause harm. I don't believe that he was
16 trying to cause any harm, but the mannerisms in which
17 he was moving could cause harm, and so that's why I
18 said it was unintentional because I don't believe
19 anywhere during the time of my interaction with him do
20 I believe he was trying to harm anyone.
21 **Q Okay. You also use the phrase that**
22 **Mr. Richardson was "assisted onto his stomach." What**
23 **do you mean by that?**
24 A When we entered the cell, I know he was
25 already on the ground, and we didn't just like pull

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1 him (indicating) or he didn't fall over. We placed
2 him or assisted him to the ground. We would have
3 controlled his general motion to distinguish us
4 helping him versus him just falling over or us doing a
5 like takedown.
6 **Q Did Mr. Richardson unintentionally attack**
7 **anybody while you were assisting him onto his stomach?**
8 MR. PREGON: Object to form.
9 A I don't recall. I really couldn't tell
10 you.
11 BY MR. DICELLO:
12 **Q Did he resist being assisted onto his**
13 **stomach, if you remember?**
14 A I don't remember.
15 **Q Again, the Tiburon reports will speak for**
16 **themselves, but the only other person that I saw that**
17 **used the phraseology that Mr. Richardson was assisted**
18 **onto his stomach was Dustin Johnson. Assuming that's**
19 **true, does that refresh your recollection as to**
20 **whether or not those are your words or whether those**
21 **are Dustin Johnson's words?**
22 MR. PREGON: Objection to form.
23 A It is my report. As a field training
24 officer, he would have assisted me, but he would have
25 not written my report for me.

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1 BY MR. DICELLO:
2 **Q So where did you come up with the term**
3 **"assisted onto the stomach" then, if you remember?**
4 A I couldn't tell you.
5 **Q You indicate that Mr. Richardson was**
6 **struggling while he was on his stomach. That's what**
7 **happened; correct?**
8 A Yes, sir.
9 **Q And then you placed your left knee over**
10 **Mr. Richardson's lower legs to prevent him from**
11 **kicking. That's what your narrative report states;**
12 **correct?**
13 A Yes, sir.
14 **Q And then you say: Richardson still**
15 **appeared to be in a state of panic and disorientation;**
16 **correct?**
17 A Yes, sir.
18 **Q So after he was restrained and in**
19 **handcuffs and you had your knee over his legs to**
20 **prevent Mr. Richardson from kicking, he still appeared**
21 **to be disoriented to you; true?**
22 A Yes, sir.
23 **Q He still appeared to not know what was**
24 **going on; true?**
25 A Yes, sir.

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1 **Q Do you know whether or not Mr. Richardson**
2 **was able to comply with commands?**
3 A I don't know. I was focused on his lower
4 body right around his -- if I remember correctly, his
5 lower body was still near the door frame, and so I was
6 trying to prevent him from kicking the steel frame of
7 the wall. I didn't want him to injure himself. I
8 mean, that was my purpose for being there and trying
9 to help was to keep him from hurting himself. I was
10 more focused on where I was. What other people were
11 doing I really honestly can't tell you.
12 **Q Did anybody tell you what to do during**
13 **this encounter with Mr. Richardson or did you just**
14 **follow your instincts?**
15 A I don't know. I really don't recall. It
16 kind of all just happened.
17 **Q Were you surprised that you were**
18 **participating in actively restraining an inmate as a**
19 **field training officer the first day on the job who**
20 **hadn't been through the corrections academy yet?**
21 MR. PREGON: Objection. Go ahead.
22 A I don't really understand your question.
23 BY MR. DICELLO:
24 **Q Well, we've seen the video. Do you agree**
25 **there were plenty of corrections officers on the scene**

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<p>1 to handle the situation; agreed?</p> <p>2 MR. PREGON: Objection.</p> <p>3 A At what point in time? I know I was one</p> <p>4 of the first ones there. Later on we were relieved as</p> <p>5 more officers arrived. But I'm not following really</p> <p>6 what you're asking to be honest.</p> <p>7 BY MR. DICELLO:</p> <p>8 Q So you weren't surprised that there you</p> <p>9 were, your first day on the job, you're not a</p> <p>10 certified corrections officer, you haven't been to the</p> <p>11 corrections academy yet, it didn't surprise you that</p> <p>12 you were in there restraining members of the community</p> <p>13 in the jail; true?</p> <p>14 A True. I accepted a position working in a</p> <p>15 jail that comes with the job description.</p> <p>16 Q Did you hear Mr. Richardson saying</p> <p>17 anything?</p> <p>18 A Not that I can recall.</p> <p>19 Q He said he couldn't breathe; didn't he?</p> <p>20 MR. PREGON: Objection; asked and</p> <p>21 answered.</p> <p>22 A I don't remember him saying anything.</p> <p>23 BY MR. DICELLO:</p> <p>24 Q Didn't he say get off me, let me up?</p> <p>25 MR. PREGON: Same objection.</p> <p style="text-align: right;">Page 30</p>	<p>1 were there, we did handcuff him. The time frame, I</p> <p>2 don't know, sir.</p> <p>3 BY MR. DICELLO:</p> <p>4 Q Once he was handcuffed and put on his</p> <p>5 stomach, were the corrections officers that were there</p> <p>6 able to control Mr. Richardson's movements?</p> <p>7 A In a broad sense, yes, he wasn't going</p> <p>8 anywhere. He wasn't like fleeing. But he still had</p> <p>9 the jerking mannerisms. So yes, he was controlled,</p> <p>10 but he was not smothered. He could still move about,</p> <p>11 but he wasn't going to be able to go anywhere or run</p> <p>12 into any walls.</p> <p>13 Q You had a concern that he'd run into a</p> <p>14 wall?</p> <p>15 A I was afraid he was going to kick a wall.</p> <p>16 That's why I placed my leg over his so that he could</p> <p>17 still move forward and backwards but he couldn't go</p> <p>18 side to side (indicating) because it's a concrete</p> <p>19 wall, and had he kicked that, that would have probably</p> <p>20 hurt really bad.</p> <p>21 Q What was the plan?</p> <p>22 A I don't understand. My plan or the</p> <p>23 overall plan?</p> <p>24 Q Well, yeah. It's my understanding that</p> <p>25 you've got three, four, five, or more corrections</p> <p style="text-align: right;">Page 32</p>
<p>1 A Again, sir, I don't remember him saying</p> <p>2 anything.</p> <p>3 BY MR. DICELLO:</p> <p>4 Q I presume you don't remember the</p> <p>5 corrections officer saying anything either; correct?</p> <p>6 A I know verbal commands were given. The</p> <p>7 exact commands that were given, no, sir, I couldn't</p> <p>8 tell you.</p> <p>9 Q Do you remember any of the inmates saying</p> <p>10 anything?</p> <p>11 A I know his cellmate -- I apologize. I</p> <p>12 don't remember his name. He was talking to him. What</p> <p>13 he was saying, I don't remember, sir. I do know he</p> <p>14 was speaking whenever we entered the cell.</p> <p>15 Q There was a sergeant with you when you</p> <p>16 responded or a sergeant was there or arrived shortly</p> <p>17 after you responded initially to Mr. Richardson;</p> <p>18 correct?</p> <p>19 A Yes, sir.</p> <p>20 Q And the sergeant has testified in this</p> <p>21 case that it took less than 20 seconds to get</p> <p>22 Mr. Richardson handcuffed. Is that consistent with</p> <p>23 your memory?</p> <p>24 MR. PREGON: Objection. Go ahead.</p> <p>25 A I know it was fairly quickly. Once we</p> <p style="text-align: right;">Page 31</p>	<p>1 officers now restraining Mr. Richardson after being</p> <p>2 called for a medical emergency; correct?</p> <p>3 A There were corrections officers there,</p> <p>4 yes, and I know that --</p> <p>5 Q So what was this plan?</p> <p>6 A Have medical assess him. We had medical</p> <p>7 personnel there in the jail, the NaphCare, and I know</p> <p>8 that they are trained in various levels, and so we</p> <p>9 were there to assist them in any way we could.</p> <p>10 Q And what did you do to assist NaphCare?</p> <p>11 A I made sure that he didn't hurt himself</p> <p>12 further by kicking a wall. That was my main concern.</p> <p>13 Q Okay. And beyond your initial concern of</p> <p>14 making sure he didn't kick a wall with his legs, did</p> <p>15 you understand what the plan was from the corrections</p> <p>16 side of things? I mean, was Mr. Richardson going to</p> <p>17 be sat up, was he going to be rolled over, was he</p> <p>18 going to be put in a restraint chair, were they going</p> <p>19 to set him on his butt, or was he just going to be</p> <p>20 held in that position indefinitely, if you know?</p> <p>21 A I don't know.</p> <p>22 Q Nobody ever communicated to you what the</p> <p>23 plan was?</p> <p>24 A I wasn't there very long, and we got</p> <p>25 transitioned out at shift change. I don't remember a</p> <p style="text-align: right;">Page 33</p>

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<p>1 plan being -- a huddle being formed and a plan being 2 gone over. I know that when it's a medical emergency, 3 we rely on the medical personnel.</p> <p>4 Q Do you know, as you sit here today, about 5 how long you were involved in restraining 6 Mr. Richardson?</p> <p>7 A I do not.</p> <p>8 Q According to the scene log that we have, 9 it shows you arriving on the scene at 15:21 and it 10 shows you exiting the pod at 15:30. Okay. So do you 11 recall once you were changed out like you told us, so 12 a corrections officer took over for you; correct?</p> <p>13 MR. PREGON: You said he entered at 14 15:21? Is that what you said?</p> <p>15 MR. DICELLO: Yeah.</p> <p>16 MR. PREGON: Okay.</p> <p>17 BY MR. DICELLO:</p> <p>18 Q So you told us that a corrections officer 19 swapped you out because it was probably near the end 20 of your shift; right?</p> <p>21 A Yes, sir.</p> <p>22 Q And once that corrections officer swapped 23 you out, did you stay in the pod or did you leave 24 pretty shortly thereafter?</p> <p>25 A I believe I left immediately. If I</p> <p style="text-align: right;">Page 34</p>	<p>1 actively restrained. Yes, we were in control of him, 2 but I even reviewed the video, and at least once 3 during the time I was there I stood up, and so I know 4 I was not actively restraining him during that time, 5 and so that's why I kind of have a problem with the 6 terminology "actively restraining him." We were 7 there. We had control of the situation. But we 8 weren't -- myself, that's who I'm speaking for, I was 9 not always touching him.</p> <p>10 Q Was Mr. Richardson ever permitted to be 11 let up?</p> <p>12 MR. PREGON: Object to form. Go ahead.</p> <p>13 A I don't know what you mean. I know 14 positions were changed. He was put in different 15 positions. But as far as being let up, I don't really 16 know what you mean.</p> <p>17 BY MR. DICELLO:</p> <p>18 Q Did anybody ever say we should put 19 Mr. Richardson on his butt?</p> <p>20 A I don't recall.</p> <p>21 Q As you sit here today, do you know 22 whether Mr. Richardson was at risk of positional 23 asphyxia based on what was going on with him on 24 May 19th, 2012, that you saw?</p> <p>25 MR. PREGON: Objection. Go ahead.</p> <p style="text-align: right;">Page 36</p>
<p>1 remember right, I followed my FTO out, and we went 2 down and would have done our normal outtake procedure, 3 turning in our radios, turning in the keys, that sort 4 of deal.</p> <p>5 Q So if the scene log shows that you 6 responded at 15:21 -- I've seen the video, but I'll 7 ask you: When you responded to the pod, you responded 8 immediately to Mr. Richardson's cell; correct?</p> <p>9 A Yes.</p> <p>10 Q With haste; true?</p> <p>11 A Yes.</p> <p>12 Q Okay. So fair to say that you were 13 involved in restraining Mr. Richardson for 14 approximately upwards of nine minutes if you entered 15 the pod at 15:21 and you exited the pod at 15:30; 16 correct?</p> <p>17 MR. PREGON: Objection. I don't think 18 that's what he said.</p> <p>19 MR. DICELLO: I'm asking.</p> <p>20 A No, sir. I don't believe I was actively 21 restraining him for nine minutes.</p> <p>22 BY MR. DICELLO:</p> <p>23 Q Mr. Richardson was actively being 24 restrained during those nine minutes, though; correct?</p> <p>25 A I would have a problem saying he was</p> <p style="text-align: right;">Page 35</p>	<p>1 A I don't know that I would have -- at that 2 time, knowing what I knew then, I don't know that I 3 would have known. I know I've received a lot more 4 training since then, and a lot more of it deals with 5 the back of a patrol car. And I know, you know, some 6 of the ways you can't put people in a patrol car. 7 Then I don't know that I would have known.</p> <p>8 BY MR. DICELLO:</p> <p>9 Q Okay. So how about based on what you 10 know now, was Mr. Richardson, based on the positions 11 that you saw him in and based on his characteristics 12 that you were aware of on May 19th, 2012, was he at 13 risk of positional asphyxia?</p> <p>14 MR. PREGON: Objection.</p> <p>15 MR. HOJNOSKI: Objection.</p> <p>16 A I don't know that my training now, 17 looking back three years, four years, I don't know 18 that my memory of that incident is applicable to the 19 training I have now. I don't know that I could 20 realistically relate the two and give you an honest 21 answer on that.</p> <p>22 BY MR. DICELLO:</p> <p>23 Q So you can't tell us whether 24 Mr. Richardson was at risk of positional asphyxia as 25 of 2012? And even now, having reviewed the video and</p> <p style="text-align: right;">Page 37</p>

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<p>1 based on your memory, you can't tell us if he was at 2 risk of positional asphyxia even now; correct? 3 A The minimal training I have, I'm not a 4 medical professional. I don't know indicators and 5 risk factors that they would. No, sir, I don't know 6 that I could. 7 Q Okay. You don't know what the risk 8 factors are for positional asphyxia; fair? 9 A No, sir. 10 Q Yes, that's correct? 11 A That is correct, I do not know. I 12 know -- 13 Q So obviously back in May of 2012 you 14 didn't know either; correct? 15 A No, sir, I would not have known. 16 Q Yes, that's correct? 17 A I apologize. No, sir. 18 Q Finishing up with you here, Mr. Henning, 19 I want to be respectful of your time. I appreciate 20 you making yourself available. 21 A Yes, sir. 22 Q So how long did you go on to work at the 23 jail? I know you've told us the dates. I should have 24 this figured out, but I can't remember. How long did 25 you work at the jail?</p> <p style="text-align: right;">Page 38</p>	<p>1 well, what do you do in a medical emergency, it really 2 depends on the situation and who we're dealing with. 3 BY MR. DICELLO: 4 Q So who's responsible for making those 5 decisions you just explained? 6 A I would say it would be a joint decision 7 between the medical personnel and the officer. If a 8 nurse is uncomfortable going into a cell with an 9 inmate, I'm not going to put her or him in that 10 position that they're going to be in an uncomfortable 11 place or possibly what they would view as danger. 12 Q So do you agree that there's got to be 13 good communication between the corrections and the 14 medical staff when responding to a medical emergency 15 for a detainee? 16 A Ideally, yes. 17 Q When you were there on May 19th, 2012, do 18 you remember a medic and a nurse responding? 19 A I don't know that I can distinguish 20 between my memory and the video. I know they were 21 there. I don't know that I can distinguish it from my 22 own memory. 23 Q Do you ever recall any medic or nurse 24 providing you or any other corrections officer with 25 any instructions or recommendations about how to</p> <p style="text-align: right;">Page 40</p>
<p>1 A Right at a year. 2 Q All right, sir. Over the course of that 3 year, did you have occasion to respond to other 4 medical emergency calls? 5 A I would have, yes. 6 Q And what was your understanding in the 7 jail as to when it's a medical call, as between 8 medical staff and corrections staff, who is 9 responsible for the positioning of the inmate and the 10 patient? 11 MR. PREGON: Objection. 12 A I believe it came down to circumstances. 13 If someone was having a diabetic complication where if 14 their blood sugar is low, normally in my experience 15 there they're compliant and we generally didn't have 16 problems with them, so they could be taken out of 17 their cell and evaluated either in a hall or in a 18 separate room. So the situation and what the problem 19 was would have dictated what we would have done. Our 20 response as a corrections officer is to maintain the 21 safety of the jail and to make sure that both the 22 inmate and the medical professional are safe. And so 23 if a treatment needed to be done between the inmate 24 and medical staff between bars, then that's what we 25 would have done in that situation. So a blanket,</p> <p style="text-align: right;">Page 39</p>	<p>1 position Mr. Richardson? 2 A I don't recall, (shakes head negatively). 3 Q Based on your understanding of the 4 customs, you know, the practices, how things were done 5 around the jail, was prone restraint, meaning 6 restrained on the belly with the hands cuffed behind 7 the back (indicating), was that prohibited or was that 8 acceptable? 9 A I believe it was acceptable if that was 10 necessary in the particular incident. 11 Q Are you aware of any written policies and 12 procedures that were enforced as of May 2012 that said 13 prone restraint was prohibited in the Montgomery 14 County Jail? 15 A No, sir, not that I know of. 16 Q You don't recall reviewing any procedures 17 that said that; true? 18 A Between working in the jail and now 19 working on the road, I can't tell you the differences 20 in the policies. 21 Q Okay. My question was you don't remember 22 reviewing any Montgomery County Jail policies that 23 said prone restraint is prohibited; correct? 24 A I don't remember a particular policy, no, 25 sir.</p> <p style="text-align: right;">Page 41</p>

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<p>1 Q Because the fact of the matter is during</p> <p>2 your year at the jail, you saw inmates placed in prone</p> <p>3 restraint more than once; correct?</p> <p>4 MR. PREGON: Object to the form.</p> <p>5 A I don't recall any particular incident.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q Mr. Richardson was restrained in a prone</p> <p>8 position; true?</p> <p>9 A Yes.</p> <p>10 MR. PREGON: Objection.</p> <p>11 A He was handcuffed on the ground.</p> <p>12 BY MR. DICELLO:</p> <p>13 Q While you were up here working for the</p> <p>14 Montgomery County Sheriff, I presume but I have to ask</p> <p>15 you, did anybody ever make you aware of an executive</p> <p>16 order issued by the governor banning the use of prone</p> <p>17 restraint in the state of Ohio that was issued in</p> <p>18 2009?</p> <p>19 MR. PREGON: And I'll object to this.</p> <p>20 A I do not recall being made aware of it.</p> <p>21 BY MR. DICELLO:</p> <p>22 Q Before today has anybody ever made you</p> <p>23 aware that there was an executive order issued in 2009</p> <p>24 in the state of Ohio banning prone restraint?</p> <p>25 MR. PREGON: And I caution you. Don't</p> <p style="text-align: right;">Page 42</p>	<p>1 BY MR. DICELLO:</p> <p>2 Q Well, whether there's judicial notice of</p> <p>3 it or testimony or whatever, I'll represent to you</p> <p>4 that there was an executive order issued in 2009 by</p> <p>5 Governor Ted Strickland that was continued by Governor</p> <p>6 Kasich that banned prone restraint across all state</p> <p>7 agencies, including the Department of Corrections. As</p> <p>8 a corrections officer working in a jail in 2012, do</p> <p>9 you think that's something you should have been made</p> <p>10 aware of?</p> <p>11 MR. PREGON: Objection.</p> <p>12 A I don't recall in Ohio if the county jail</p> <p>13 is part of the state system. Here in Georgia it's</p> <p>14 not. And so I don't know that any state orders for</p> <p>15 state agencies would apply. So I don't know that</p> <p>16 there's an expectation of an order like that being</p> <p>17 necessary.</p> <p>18 BY MR. DICELLO:</p> <p>19 Q So you wouldn't expect to be made aware</p> <p>20 of it. Is that what you're telling us?</p> <p>21 A Not if it doesn't apply to my position or</p> <p>22 my agency.</p> <p>23 Q Why do you think the governor would issue</p> <p>24 an order like that banning prone restraint?</p> <p>25 MR. PREGON: Objection. How's he going</p> <p style="text-align: right;">Page 44</p>
<p>1 reveal anything that you've talked about with</p> <p>2 attorneys such as me. Anybody besides me?</p> <p>3 THE WITNESS: No, sir.</p> <p>4 BY MR. DICELLO:</p> <p>5 Q Down where you work now for the police</p> <p>6 department, I don't know how things work down there,</p> <p>7 but is there an equivalent function by the governor</p> <p>8 down there where they're able to issue executive</p> <p>9 orders from time to time that govern police officers'</p> <p>10 conduct?</p> <p>11 MR. PREGON: Objection.</p> <p>12 A The state governor can issue executive</p> <p>13 orders. Our department policies are generally</p> <p>14 stricter than the state requirements. So to answer</p> <p>15 your question, yes, the governor of the state can</p> <p>16 write executive orders.</p> <p>17 BY MR. DICELLO:</p> <p>18 Q And I'm not suggesting that it's your job</p> <p>19 to do this, but do you have an expectation that your</p> <p>20 department is going to make you aware of the executive</p> <p>21 orders you need to be aware of to do your job?</p> <p>22 MR. PREGON: Objection; assumes facts not</p> <p>23 in evidence.</p> <p>24 A Our department does try to keep us</p> <p>25 abreast of any new laws or changes in laws, yes, sir.</p> <p style="text-align: right;">Page 43</p>	<p>1 to know that?</p> <p>2 MR. DICELLO: He's a law enforcement</p> <p>3 officer who restrains people.</p> <p>4 BY MR. DICELLO:</p> <p>5 Q Right?</p> <p>6 A Yes, sir, I do restrain people.</p> <p>7 MR. PREGON: Same objection.</p> <p>8 BY MR. DICELLO:</p> <p>9 Q So why do you think a governor would</p> <p>10 issue a ban against prone restraint?</p> <p>11 MR. PREGON: Objection.</p> <p>12 A Sir, he's a governor. He could have done</p> <p>13 anything from a political move to try to obtain more</p> <p>14 votes to he could have actually seen that there was a</p> <p>15 reason for it. I don't know. He's a governor. I'm</p> <p>16 just a police officer.</p> <p>17 BY MR. DICELLO:</p> <p>18 Q Do you know how Mr. Richardson died?</p> <p>19 A No, sir, not entirely.</p> <p>20 Q Who informed you that he died, if you</p> <p>21 remember?</p> <p>22 A I don't remember. It was the morning</p> <p>23 after when I came into work. I don't remember if it</p> <p>24 was in roll call or preparing for my individual</p> <p>25 position.</p> <p style="text-align: right;">Page 45</p>

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<p>1 Q Did anybody interview you about what 2 happened to Mr. Richardson? 3 A No, sir. 4 Q Did you understand there was an 5 investigation into the circumstances surrounding his 6 death? 7 A I was made aware of that after the fact. 8 Q Did anybody share with you the results of 9 the investigation? 10 A Beyond him passing, I don't know that any 11 other details were made apparent to me. 12 Q Do you know if the manner in which he was 13 restrained caused or contributed to causing his death? 14 MR. PREGON: Objection. 15 A I don't know that. 16 BY MR. DiCELLO: 17 Q Is that something you want to know? 18 A If it could make my job better or if 19 something needed to be fixed, then yes, but it is not 20 my place to try to go and solve those problems. There 21 are people that that is their job. 22 MR. DiCELLO: Mr. Henning, thanks for 23 your patience. I don't have any other questions. 24 I appreciate your time. 25 THE WITNESS: Yes, sir. Thank you.</p> <p style="text-align: right;">Page 46</p>	<p>1 C E R T I F I C A T E 2 3 I hereby certify that the foregoing 4 transcript was reported, as stated in the 5 caption; that the witness was duly sworn and 6 elected to reserve signature in this matter; that 7 the colloquies, questions and answers were 8 reduced to writing under my direction; and that 9 the foregoing pages 1 through 47 represent a 10 true, correct, and complete record of the 11 evidence given. 12 I further certify that I am not 13 disqualified for a relationship of interest under 14 O.C.G.A. 9-11-28(c); that I am a Georgia 15 Certified Court Reporter here as a representative 16 of D'Amico Gershwin, Inc.; that D'Amico Gershwin 17 was contacted by Mike Mobley Reporting to provide 18 court reporting services for this deposition; 19 that I will not be taking this deposition under 20 any contract that is prohibited by O.C.G.A. 21 15-14-37(a) and (b) or Article 7C of the Rules 22 and Regulations of the Board; and by the attached 23 disclosure forms I confirm that I/D'Amico 24 Gershwin is not a party to a contract prohibited 25 by O.C.G.A. 15-14-37 or Article 7C of the Rules and Regulations of the Board. This, the 14th day of March, 2016.</p> <p style="text-align: right;">_____ DANIEL M. GERSHWIN, CCR-B-1012</p> <p style="text-align: right;">Page 48</p>
<p>1 MR. DiCELLO: Okay. Good luck with 2 everything. 3 MR. PREGON: Okay. Officer, you've got 4 the right to read through this if it's ordered. 5 You have an errata sheet that would come with it. 6 And as you read it, if you think something was 7 taken down inaccurately, you could make a note of 8 that. And then once you do that, you can sign 9 off on it or you can waive that right and just 10 not sign off on and it just gets entered as is. 11 It's entirely up to you. A lot of people are 12 reading. Some people have waived it, but I'll 13 leave that up to you. If you have any concerns 14 about whether or not you heard everything that 15 Mr. DiCello was asking you, I'd tell you you 16 probably should not waive it and read, but it's 17 up to you. I don't know what the connection was 18 like on your end. 19 THE WITNESS: Yes, sir. I believe we had 20 a good connection, but I'll more than likely 21 review it. 22 MR. PREGON: Okay. Very good. He won't 23 waive reading. 24 (Deposition concluded at 3:00 p.m.) 25 - - -</p> <p style="text-align: right;">Page 47</p>	

C E R T I F I C A T E

I hereby certify that the foregoing transcript was reported, as stated in the caption; that the witness was duly sworn and elected to reserve signature in this matter; that the colloquies, questions and answers were reduced to writing under my direction; and that the foregoing pages 1 through 47 represent a true, correct, and complete record of the evidence given.

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This, the 14th day of March, 2016.



DANIEL M. GERSHWIN, CCR-B-1012

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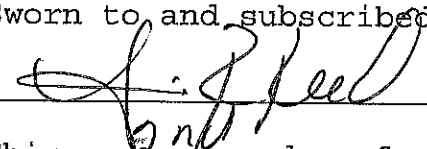
21 _____


MATTHEW H. HENNING,

22 _____

Sworn to and subscribed before me,

23 _____

24 , Notary Public.

25 This 2nd day of April, 2016

My Commission Expires: Feb 21, 2017



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